

*STATE OF MARYLAND*

**TASK FORCE REPORT TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY**

*ON*

**PROCUREMENT OF HEALTH, EDUCATION AND  
SOCIAL SERVICES BY STATE AGENCIES**

AS REQUIRED BY CHAPTERS 438 AND 439, LAWS OF 2008,  
AMENDED BY CHAPTER 683, LAWS OF 2010

State Senator Catherine E. Pugh, Co-Chair

State Delegate Joseline A. Peña-Melnyk, Co-Chair

NOVEMBER 30, 2011

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## TASK FORCE MEMBERS

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### *Appointed by Governor:*

- Sheldon D. Glass, M.D., Glass Health Systems
- James L. Kunz, McDaniel College
- Walter McNeil, Challengers Independent Living
- Lucy L. Slaich, Towson University
- Marti G. Worshtil, Prince George's Child Resource Center, Inc.

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### *Appointed by Senate President Thomas V. "Mike" Miller, Jr.:*

- Senator Catherine E. Pugh, Co-Chair  
District 40 – Baltimore City
- Senator Bill Ferguson  
District 46 – Baltimore City

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### *Appointed by House Speaker Michael E. Busch:*

- Delegate Joseline A. Peña-Melnyk, Co-Chair  
District 21 – Prince George's & Anne Arundel Counties
- Delegate Kirill Reznik  
District 39 – Montgomery County

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### *Ex officio:*

- Susanne Brogan, designee of the State Treasurer
- John B. Howard, Jr., designee of the Attorney General
- Joel Leberknight, designee of Secretary of Budget & Management
- Albert Annan, designee of State Superintendent of Schools
- Gary Goldberg, designee of Secretary of Health & Mental Hygiene
- Sandra Johnson, designee of Secretary of Human Resources
- Margo Wilson, designee of Secretary of Juvenile Services
- Merril Oliver, designee of Director of Governor's Grants Office
- Janice Montague, designee of Special Secretary of Minority Affairs.

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### *Staff:*

#### Board of Public Works

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- Mary Jo Childs, Procurement Advisor, [mchilds@comp.state.md.us](mailto:mchilds@comp.state.md.us)
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## **EXECUTIVE SUMMARY**

Maryland relies on its public procurement system to deliver services to our most vulnerable citizens. Creating a procurement system that accommodates the important principles of transparency, competition, and fairness, while still recognizing the need for flexibility when citizens' lives are affected is a complex task. To add to the challenge, procurement officers are stretched thin with increasing demands and limited resources. The provider community struggles with increased paperwork demands and ever-changing federal and State laws which shift their focus away from caring for clients. The result has been a service-delivery system that often falls short in terms of efficiency and effectiveness. Although this report focuses on procedures for awarding procurement contracts, many of the same problems exist with grant awards.

To address the systemic problems in human services procurement, the 2008 General Assembly created the Task Force to Study the Procurement of Health and Social Services by State Agencies.<sup>1</sup> The Task Force was charged with:

- Evaluating and making recommendations regarding the methods used by State agencies to procure the delivery of health, education, and social services;
- Examining and making recommendations regarding State agencies' timeliness in preparing and issuing requests for proposals for the delivery of health, education, and human services;
- Examining and making recommendations regarding the timeliness of payments to contractors;
- Examining and making recommendations regarding possible standardization of contracting processes among and within State agencies; and
- Identifying and making recommendations regarding any other issues, including current State laws or regulations affecting the efficiency and cost of procuring health, education, and social services.

When making the recommendations, the Task Force considered: 1) the effect of procurement processes on quality and continuity of services; 2) the costs and benefits of existing procurement procedures; and 3) the effects of procurement requirements on the number and diversity of potential providers of services contracted by the State.

The Task Force issued a preliminary report in November 2010, and met twice in 2011 to discuss recommendations and prepare the final report. The Task Force makes the following recommendations:

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<sup>1</sup> Chapter 439 of the Laws of 2008; Chapter 683 of the Laws of 2010 extended and reconfigured the Task Force to become the Task Force to Study the Procurement of Health, Education, and Social Services by State Agencies.

*Methods used by State agencies to procure the delivery of health, education, and social services*

- Exempt foster care contracts from State procurement laws.<sup>2</sup>
- Ease statutory and regulatory restrictions on the use of alternative procurement methods and give agencies the discretion to determine the appropriate method under the circumstances.

*State agencies' timeliness in preparing and issuing requests for proposals for the delivery of health, education, and human services*

- Allow more flexibility in obtaining provider input when drafting specifications for procurements
- Obtain copies of Request for Proposals (RFPs) from other jurisdictions and create an agency reference library.
- Develop an internal tracking system that enables management to determine where delays are occurring.
- In appropriate cases, waive the requirement that RFPs be approved by a control agency.

*Timeliness of payments to contractors*

- Expand the requirement that contractors with large State contracts accept electronic payments to include all State contractors.
- Allow electronic invoicing.
- Allow providers to draw funds in advance of services rendered similar to federal payment models, which would eliminate cash-flow problems for small providers who otherwise require outside credit sources at additional cost.
- Meet with representatives from provider organizations to develop a standard invoice format.

*Standardization of contracting processes among and within State agencies*

- Streamline and standardize contracts and grant award agreements where possible.
- Standardize information requirements, such as budget categories, whenever possible.
- Propose legislation requiring agencies to develop standard forms and billing procedures by a certain date.
- Encourage State agencies to strive for uniformity in reporting formats.

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<sup>2</sup> The designee from the State Treasurer's Office voted no on this recommendation.

*Other issues, including current State laws or regulations affecting the efficiency and cost of procuring health, education and social services.*

- Allow adequate time for providers to review contract documents before signing.
- Allow electronic signatures to bind the parties.
- Since the small procurement threshold has not been increased since 1996, recommend that the Board of Public Works review the current \$25,000 small procurement threshold and make appropriate recommendations to the General Assembly (as provided in §13-109 of the State Finance and Procurement Article of the Annotated Code).
- Since the Board of Public Works procurement delegation has not been raised since 1999, recommend that the Board of Public Works conduct an analysis of its current \$200,000 procurement delegation.<sup>3</sup>
- Increase and centralize training for State agencies.
- Establish disincentives regarding the filing and prosecution of protests concerning State procurements by providing that the State may recover the same types of costs as are available to a prospective bidder or offeror, a bidder, or an offeror under current law and regulations, when such a party files and prosecutes a protest in bad faith or without substantial justification.<sup>4</sup>

#### *Minority Business Enterprise (MBE)*

- Identify ways to introduce appropriate flexibility in administering and reporting MBE subcontract payments.
- Offer workshops in MBE subcontract requirements targeted for human services providers.
- Provide additional training for procurement officers and contract administrators to fully understand the concept of good-faith efforts in MBE subcontracting.
- Periodically survey providers to pinpoint any unresolved MBE concerns.
- Conduct MBE workshops for providers to enhance knowledge and skills in areas such as MBE forms, searches of the Maryland Department of Transportation (MDOT) database, quarterly reporting, and waivers.
- Generate MBE Frequently Asked Questions (FAQs) that providers can access on the Internet.
- Schedule regular meetings among the Governor's Office of Minority Affairs (GOMA) and State agencies to maintain clarity and consistency regarding provider MBE requirements.
- Clarify and streamline current MBE forms and instructions to the greatest extent possible.

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<sup>3</sup> COMAR 21.02.01.04; Designees from the State Treasurer's Office and the Office of Minority Affairs and an appointed member of the contract provider community voted "no" to the initial Task Force recommendation that the procurement delegation be raised to \$500,000.

<sup>4</sup> The designee from the State Treasurer's Office voted no on this recommendation.

- Explore repeal of the statutory requirement that MBE prime contractors meet MBE subcontracting goals, especially in light of continuing developments in the State's MBE Program.

### *Contract Monitoring*

- Explore ways to consolidate and condense recurring reports.
- Ensure that RFP documents clearly outline provider responsibilities and reporting requirements, as well as contract monitoring and payment expectations.
- Provide training and standards regarding the level of oversight and control that is reasonable in managing contract performance.
- Set a reasonable standard for requiring audits.

### *Human Services Procurement Committee*

Create a standing committee composed of:

- 1) State agencies procuring social services;
- 2) Department of Budget and Management;
- 3) Governor's Office of Minority Affairs;
- 4) Governor's Office of Community Initiatives;
- 5) Governor's Office for Children;
- 6) Board of Public Works; and
- 7) Provider organizations.

The Committee would: 1) ensure the recommendations of the Task Force are implemented; and 2) provide a forum for resolution of recurring issues. The committee would report annually on its progress to the General Assembly and Board of Public Works.

### *Technology*

- Establish a phased-in requirement that agencies use *eMaryland Marketplace* to conduct competitive sealed proposal procurements.<sup>5</sup>
- Use the State's *eGovernment* contract to develop an Internet-based data warehouse (document vault) that would eliminate the need for providers to submit the same documents to multiple agencies.

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<sup>5</sup> The designee of the Secretary of Budget and Management voted no on this recommendation

## **I. Background and Scope of the Report**

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Chapter 439 of the Laws of 2008 established the Task Force to Study the Procurement of Health and Social Services by State Agencies. Chapter 683 of the Laws of 2010 extended the renamed Task Force to Study the Procurement of Health, Education, and Social Services by State Agencies and expanded its membership to include the Attorney General and the Governor's Grants Office. The Task Force is responsible for:

- Evaluating and making recommendations regarding the methods used by State agencies to procure the delivery of health, education, and social services;
- Examining and making recommendations regarding State agencies' timeliness in preparing and issuing requests for proposals for the delivery of health, education, and human services;
- Examining and making recommendations regarding the timeliness of payments to contractors;
- Examining and making recommendations regarding possible standardization of contracting processes among and within State agencies; and
- Identifying and making recommendations regarding any other issues, including current State laws or regulations affecting the efficiency and cost of procuring health, education and social services.

When making the recommendations, the Task Force must consider: 1) the effect of procurement processes on quality and continuity of services; 2) the costs and benefits of existing procurement procedures; and 3) the effects of procurement requirements on the number and diversity of potential providers of services contracted by the State.

The original Task Force first met on October 6, 2009. A preliminary report was issued November 30, 2010, which is included as Attachment A. The original Task Force also developed a survey of State agencies to assess the biggest challenges to effective service delivery. The survey results are included as Attachment B to this report.

The expanded Task Force, now comprising eighteen members, met on May 19, 2011, and again on August 24, 2011. The Task Force was divided into four subcommittees to address specific issues: 1) contractor payments; 2) MBE participation; 3) procurement best practices; and 4) contract monitoring. The Task Force developed a survey of State agencies to assess their administrative procedures which helped identify inefficient and time-consuming procurement and grant processes. The group's deliberations resulted in this Report which responds to the General Assembly's inquiries and makes recommendations for improving procurement of health, education, and social services.

## **II. How Are Contracts Awarded? The State's Procurement Process**

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The procurement of health, education, and social services is governed primarily by the Code of Maryland Regulations (COMAR) and the State Finance and Procurement Article.<sup>6</sup> COMAR defines social services as services procured in order to provide support, care, or shelter directly to third-party clients under a contract, the primary purpose of which is the direct provision of social services.<sup>7</sup> Agencies have several procurement methods at their disposal, with the preferred method being competitive sealed proposals. Multiyear contracts are authorized to assure continuity of care.<sup>8</sup> Agency procurements are also subject to the State's MBE laws and Small Business Reserve requirements.<sup>9</sup> The Board of Public Works generally retains overall supervision and policy direction with respect to the procurement of social services.

### *Step 1: Developing the Request for Proposals<sup>10</sup>*

The first step in developing an RFP is assessing the needs of the agency and writing a scope of work. A scope of work should be developed through a collaborative effort among agency procurement staff and end users. At a minimum, the RFP must include:

- Applicable program standards including a requirement that each provider state how he or she will meet the standards;
- Minimum qualifications of providers and program staff;
- Minimum facility standards;
- Past performance;
- General program and fiscal accountability standards; and
- Information concerning easing transition of third-party clients to new providers.<sup>11</sup>

Input from the provider community is limited by the State's ethics laws. A provider who assists an agency in drafting the scope of work is prohibited from submitting a proposal for that procurement.<sup>12</sup> The agency survey collectively identified drafting the scope of work and preparing the RFP as the most time-consuming parts of the procurement process.

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<sup>6</sup> State Finance and Procurement Article, §13-102(b)(1); COMAR 21.14.01.01 – 21.14.01.07

<sup>7</sup> COMAR 21.01.02.01

<sup>8</sup> COMAR 21.14.01.06

<sup>9</sup> State Finance and Procurement Article, §§14-302 and 14-501

<sup>10</sup> The competitive sealed proposals method is preferred for procurement of human, social, cultural and educational services although other procurement methods are authorized. State Finance and Procurement Article, §13-104 and COMAR 21.14.01.03.

<sup>11</sup> COMAR 21.14.01.06

<sup>12</sup> State Government Article, §15-508. Providers may comment on a scope of work prepared by an agency when comments are solicited from two or more persons as part of a request for information or a pre-proposal conference.

For contracts over \$200,000, the agency must coordinate with its Procurement Review Group to assess the level of minority and small business participation.<sup>13</sup> Agencies must also ensure that the RFP has been reviewed by the Attorney General's Office.

Once the RFP is drafted, the agency submits it to the Department of Budget and Management for review as the agency with jurisdiction over services contracts.<sup>14</sup> Not every RFP is subject to DBM review. DBM has delegated \$25,000 procurement authority to the Departments of Juvenile Services and Education, and \$100,000 authority to the Departments of Human Resources and Health and Mental Hygiene.

The typical amount of time it takes an agency to complete this stage of the procurement ranges from three to eighteen months.

### *Step 2: Advertising by Agency*

After DBM review is complete, the agency publishes the solicitation notice in *eMaryland Marketplace*, the State's electronic procurement portal, for at least twenty days.<sup>15</sup> An agency may hold a pre-proposal conference during the proposal preparation period although one is not required.<sup>16</sup>

The typical amount of time it takes an agency to complete this stage of the procurement ranges from 30 to 60 days.

### *Step 3: Evaluation of Proposals*

Once proposals are received, agencies may initially classify the proposals as reasonably susceptible of being selected for award. Those proposals that do not meet the initial threshold are no longer considered for award.<sup>17</sup> Evaluations are typically conducted by agency employees with an expertise in the services being procured. In particularly complex procurements, consultants may be hired to assist the evaluation team and procurement officer. Evaluation of the proposals may include discussions and one or more best and final offers from competing providers.<sup>18</sup> The evaluation team is tasked with reviewing proposals and making a recommendation to the procurement officer who is ultimately responsible for making a recommendation for award. The procurement officer's recommendation for award must be approved by the Secretary or designee.<sup>19</sup>

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<sup>13</sup> Board of Public Works Advisory 2001-2 requires the agency's Procurement Review Group, comprised of the MBE liaison and procurement representative, to assess each procurement expected to exceed \$200,000 for MBE and small business participation.

<sup>14</sup> State Finance and Procurement Article, §12-107.

<sup>15</sup> <https://ebidmarketplace.com>; State Finance and Procurement Article, §13-104.

<sup>16</sup> COMAR 21.05.03.02

<sup>17</sup> COMAR 21.05.03.03

<sup>18</sup> Id.

<sup>19</sup> Id.

The typical number of days it takes an agency to complete this stage of the procurement ranges from 30 to 60 days.<sup>20</sup>

#### *Step 4: Approvals*

The Department of Budget and Management must approve contract awards:

- over \$25,000 for the Department of Juvenile Services and the Maryland State Department of Education; and
- over \$100,000 for the Departments of Human Resources and Health and Mental Hygiene.

Contract awards over \$200,000 must be approved by the Board of Public Works.

The agency must also obtain certification from the appropriate fiscal authority that funds are available for the contract before award is made.<sup>21</sup>

The typical number of days it takes an agency to complete this stage of the procurement are:

- Fourteen days for awards requiring only DBM approval; and
- Thirty additional days for awards also requiring Board of Public Works approval.

### **III. Other Procurement Methods**

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In addition to competitive sealed proposals, service agencies are permitted to use other procurement methods such as competitive sealed bidding, noncompetitive negotiation, small procurement, sole source, and emergency procurement<sup>22</sup>.

Although the backbone of Maryland's procurement system is broad-based competition, State regulations permit agencies to limit competition through the use of sole source, noncompetitive negotiation, and multi-year contracts, recognizing that care of third-party clients is of the utmost concern to the State.

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<sup>20</sup> The Department of Human Resources may take up to nine months to complete proposal evaluations depending on the number of proposals received and complexity of the scope of work.

<sup>21</sup> *Id.*

<sup>22</sup> COMAR 21.14.01.03. The emergency procurement method may be used when an unforeseeable condition that seriously threatens the health, safety, or general welfare of third-party clients causes an immediate and serious need that cannot be met through other procurement methods. This method carries with it certain limitations and reporting requirements. See COMAR 21.05.06.02.

### *Noncompetitive Negotiated Procurements<sup>23</sup>*

This method may only be used by the Departments of Human Resources and Juvenile Services with the approval of the agency head after the procurement officer determines that two or more sources for the services are available but, because of the absence of effective competition, it is unreasonable to expect those sources to respond to a solicitation. This method is limited to the following services:

- Recruitment of an employer for a job training and employment program;
- Group foster care services for children or adults under a negotiated rate system adopted by regulation; or
- The following services for the mentally ill:
  - a. Residential rehabilitation services;
  - b. Community rehabilitation services; or
  - c. Therapeutic group home services for children and adolescents.

Instead of an RFP, an agency develops a Request for Expressions of Interest that states its general requirements. The solicitation notice must be posted on *eMaryland Marketplace* (if over \$25,000) at least ten 10 days before written general expressions of interest are due from providers. As a need for the services arises, the procurement officer may conduct discussions with one or more providers and award a contract if in the State's best interest.

The approval requirements are the same as if competitive sealed proposals were used to procure the services.

Assuming rates have been set by the Interagency Rates Committee, the number of days it takes an agency to complete this type of procurement typically ranges from one to fourteen days.

### *Sole Source Procurements<sup>24</sup>*

Sole source contracts are permitted to assure continuity of care to third-party clients if:

- A requirement is available from only a single contractor as provided in sole source regulations found in COMAR 21.05.05.02; or
- Based on an assessment by a licensed or certified health practitioner, the head of a funding unit determines that a change in the human or social services provider would have a detrimental impact on those clients currently being served by the provider.

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<sup>23</sup> Noncompetitive Negotiated Procurement of Human, Social, or Educational Services as set forth in COMAR 21.14.01.04

<sup>24</sup> COMAR 21.14.01.06.

Department of Budget and Management approval is required for sole source contract awards over \$25,000 for the Department of Juvenile Services and the Maryland State Department of Education. The Department of Budget and Management approval threshold is \$100,000 for the Departments of Human Resources and Health and Mental Hygiene. Board of Public Works approval is required for sole source contract awards over \$100,000.<sup>25</sup>

The number of days it takes an agency to complete this type of procurement typically ranges from fourteen to sixty days.

#### **IV. After Contract Award**

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##### *Payments*

The State must pay contractors no later than 30 days after receipt of a proper invoice from the contractor.<sup>26</sup> An invoice with errors is not considered a proper invoice. The State may be liable for interest on invoices that remain unpaid for more than 45 days after the agency receives an invoice.<sup>27</sup> In addition to the payment requirements set forth in the State statute, the Governor's Office of Minority Affairs has issued a Prompt Payment Directive which governs payments to subcontractors.<sup>28</sup>

The Prompt Payment Directive applies to payments by Executive agencies on non-construction contracts over \$25,000.<sup>29</sup> The Directive offers specific remedies when a subcontractor is not paid undisputed amounts by the State's prime contractor for work performed.

##### *Contract Monitoring*

**PROGRAM REPORTS:** Contract compliance is assessed by the agency's program staff typically through ongoing reports and on-site visits. The content and frequency of reports varies and is determined by the terms of the contract. Providers may be required to submit identical reports to multiple agencies.

**MBE COMPLIANCE:** Providers under contracts with MBE subcontracting goals must submit quarterly reports to the agency MBE liaison to document payments made to MBE subcontractors.<sup>30</sup> Providers may substitute MBE subcontractors only with the written approval of the head of the agency and by contract amendment.<sup>31</sup>

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<sup>25</sup> COMAR 21.02.01.04

<sup>26</sup> State Finance and Procurement Article, §15-103

<sup>27</sup> State Finance and Procurement Article, §§15-103—15-105

<sup>28</sup> <http://www.mdminoritybusiness.com/documents/PromptPaymentDirectiveFINAL08-01-08.pdf>

<sup>29</sup> The executive agencies are listed in State Government Article, §8-201, Annotated Code of Maryland

<sup>30</sup> MBE reports may be required monthly depending on the federal funding stream.

<sup>31</sup> COMAR 21.11.03.12

## *Annual Audit Reports*

The following represents the minimum of what may be required each fiscal year from providers with State social services contracts (provided by an independent accounting firm):

- Statement that the Generally Accepted Accounting Principles and the Generally Accepted Auditing Standards established by the American Institute of Certified Public Accountants were followed;
- Opinion Statement on Financial Statements;
- Report on Compliance;
- Comments on Prior Audit findings and completion of Corrective Actions, if applicable; and
- Financial Statements (Balance Sheet, Statement of Revenue and Expense, and Functional Distribution of Expenses).

Other schedules required:

- Identification of the specific sources of funds received;
- Comparison of budgeted expenses to actual expenses;
- Computation of rate determination for actual cost of care per month;
- Comparison of payment rate to actual rate above; and
- Determination of overpayment and underpayment per service function.

For contractors having more than one contract, discrete financial statements and other schedules must be provided for each contract. A provider with contracts with other State or federal agencies, or other states must separately list each source of revenue, amount of contract, and services provided.

## **V. Use of Technology**

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State law authorizes agencies to conduct the entire procurement process including contractor payments (contract administration) by electronic means.<sup>32</sup> However, few agencies conduct procurements online or even accept electronic documents and invoices.<sup>33</sup> Until recently, the primary technology for State procurement was *eMaryland Marketplace*, which served as an electronic bid board and vehicle for competitive sealed bidding. But the system could not conduct competitive sealed proposals procurements electronically. In August 2011, the Board of Public Works approved two major technology contracts – one a new Web-based electronic procurement system (new *eMaryland Marketplace*) and the other an *eGovernment* services contract.<sup>34</sup> The new *eMaryland Marketplace* has the capability to conduct competitive sealed proposals electronically. It also has enhanced reporting capabilities for better contract monitoring.

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<sup>32</sup> State Finance and Procurement Article, §13-226.

<sup>33</sup> Task Force Agency Survey Results

<sup>34</sup> August 10, 2011 Board of Public Works meeting , Items DBM 1-S and DoIT 3-IT

## **VI. *Summary of Efforts by Other Jurisdictions***

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Like Maryland, other states have recognized the need for increased efficiency in their procurement processes to ensure services and supplies are available for the most vulnerable citizens.

### **State of Connecticut** - Commission on Nonprofit Health and Human Services

Recommendations include:

- A. Encourage electronic payments.
- B. Reduce the need for budget amendments by not requiring them for small variances.
- C. Where appropriate, use advance payments after a one-year probationary period (for either new contractors or problematic contractors).
- D. Use contract periods that allow sufficient time for contract renewals, while also preserving contractor's responsibility for client services during transition of contracts. (e.g., 13 rather than 12 months, 25 rather than 24 months, 37 rather than 36 months)
- E. Encourage use of multi-year contracts and/or consolidate multiple contracts between one agency and one nonprofit provider.

The full report is available at:

[http://www.ct.gov/opm/lib/opm/finance/hhs\\_commission/final\\_report\\_commission\\_on\\_nonprofit\\_health\\_and\\_human\\_services.pdf](http://www.ct.gov/opm/lib/opm/finance/hhs_commission/final_report_commission_on_nonprofit_health_and_human_services.pdf)

### **New York City** - Office of Deputy Mayor for Health and Human Services and Mayor's Office of Contract Services

Recommendations include:

- A. Implementing cross-agency prequalification and Master Service Agreements for human services by:
  - using data vault to reduce the administrative burden;
  - structuring prequalification around a common human services taxonomy; and
  - creating a new HHS procurement business function to set up *and administer the process*.
- B. Re-engineering processes (to clear bottlenecks) and improving transparency by:
  - implementing measures to increase visibility into the procurement and contract management processes; and
  - leveraging technology to automate and integrate workflow, collaboration and reporting.

C. Institutionalizing collaboration across the human services system by:

- facilitating cross-agency collaboration with a new HHS procurement business function, supported by a human service taxonomy; align HHS service delivery and procurement strategy and conduct overlap analyses to identify areas that may benefit from standard approaches; and
- building on existing collaborative actions across the City and between the City and providers; support providers' transitions to new processes and tools and investigate new operating models.

The full report is available at:

[http://www.nyc.gov/html/nonprofit/downloads/pdf/hhs\\_accelerator.pdf](http://www.nyc.gov/html/nonprofit/downloads/pdf/hhs_accelerator.pdf)

## **State of Florida**

Created a Vendor Ombudsman in the Financial Services department whose duties include acting as an advocate for contractors who may be experiencing problems in obtaining timely payments from a state agency.

[http://www.dms.myflorida.com/business\\_operations/state\\_purchasing/documents\\_forms\\_references\\_resources/vendor\\_ombudsman](http://www.dms.myflorida.com/business_operations/state_purchasing/documents_forms_references_resources/vendor_ombudsman)

## **VII. Areas for Improvement**

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The Task Force identified the following general areas in need of remedial action:

### *Inconsistent procedures among human services agencies*

Although the same procurement laws apply to each of the human services agencies, they have not yet developed standardized forms that could be used across State agencies. The format and information required on forms varies across agencies. For those forms that are standardized, agencies require providers to submit new forms with each proposal.

Past efforts to standardize procurement forms failed because of resistance from agencies. Even though several procurement forms are in *regulation*, agencies are permitted to modify the forms.<sup>35</sup>

### *Solicitation process*

Human services especially are subject to ever-changing federal and State laws which impact how providers deliver services. There is not always effective communication among the procurement office, programs, and legal office to develop a concise scope of work. State ethics laws limit provider input when a scope of work is being developed.

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<sup>35</sup>Bid/proposal affidavit (COMAR 21.05.08.07), conflict of interest affidavit (COMAR 21.05.08.08), and contract affidavit (COMAR 21.07.01.25).

## *Implementation of State's MBE Laws*

It was not until 2009 that a formal MBE strategy was developed for human services contracts. GOMA recommended agencies set a 5% MBE goal across the board for contracts meeting certain size and license criteria. There have been growing pains with the implementation of the MBE strategy. Agencies have not always been successful in teaching providers how to comply with the new requirements. On occasion, agencies have given providers inconsistent or inaccurate information on how to meet the MBE goal. Providers who are eligible to become State-certified MBEs are reluctant to pursue certification because they see the process as time-consuming and costly. Since State law requires MBE prime contractors to meet MBE subcontracting goals, there is little perceived benefit to the MBE provider who bids as a prime contractor.

## *Provider Payments*

Most contracts are structured so that providers serve their clients and then bill monthly for the services already provided. Even under the best circumstances, providers often float one month's expenses before State payment is received. If there is an error on the invoice, it can be 60 days or more before State payment is received. Small nonprofits especially may have a difficult time managing cash flow under these circumstances. Although prepayments are authorized by some State agencies, they are not used by all.

*Late Payments:* Causes for late payments to providers (30 days or more after an invoice is received) include:

1. Contested charges on an invoice
2. Invoice sent to wrong person or address
3. Invoice format inconsistent with specified requirements
4. Provider's inability to accept electronic payments

## *Use of Technology*

Other jurisdictions grappling with the same issues as Maryland targeted enhanced technology as a cornerstone of any procurement reform efforts. Until very recently, State agencies were limited in their use of technology because: 1) the technology did not accommodate many procurement processes including electronic competitive sealed proposals; and 2) many agency operating policies were not flexible to allow for electronic invoicing or electronic signatures on contract documents.

The State recently awarded two major technology contracts that could have a significant impact on procurement operations if used to their potential: *eMaryland Marketplace* and *eGovernment*.<sup>36</sup> The successor system to *eMaryland Marketplace* (which bears the same name) has the capability to conduct competitive sealed proposals procurements electronically. The successor system also has enhanced reporting capabilities, but the system is effective only if agencies use it.

### *Contract monitoring requirements*

Providers have redundant reporting requirements among agencies. Monitoring expectations are not made clear to providers in the RFP or contract documents. Many services are supported by different funding streams, flowing through different offices in one or more agencies but are delivered by the same groups of providers. Often they must now submit the same basic information in widely different formats or levels of detail. This can require providers to re-format or re-calculate the same budget or program information for each RFP, contract, and report for each State office involved.

### *Coordination and Collaboration Among Agencies and Providers*

The Maryland Board of Public Works, comprised of the Governor, Treasurer, and Comptroller, sets State procurement policy, adopts procurement regulations, and establishes internal operational procedures.<sup>37</sup> The Procurement Advisory Council (PAC), chaired by the Board's Executive Secretary, is comprised of the primary procurement units, the University System of Maryland, the Special Secretary for the Office of Minority Affairs, members of the public and local government.<sup>38</sup> The PAC does not include any of the four agencies that procure health, education, and social services. The PAC's duties include enhancing communication among State agencies, providing a forum to discuss procurement issues, and advising the Board on problems in the procurement process.

## **VIII. Recommendations**

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After thorough review and discussion of the areas for improvement and the solutions proposed by other jurisdictions, the Task Force makes the following recommendations:

### ***Methods used by State agencies to procure the delivery of health, education, and social services***

- Exempt foster care contracts from State procurement laws.<sup>39</sup>
- Ease statutory and regulatory restrictions on the use of alternative procurement methods and give agencies the discretion to determine the appropriate method under the circumstances.

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<sup>36</sup> Contract awards to NICUSA, Inc. for eGovernment services and Periscope Holdings, Inc. for Web-based electronic procurement services (August 10, 2011 Board of Public Works meeting)

<sup>37</sup> State Finance and Procurement Article, §12-101.

<sup>38</sup> State Finance and Procurement Article, §12-105.

<sup>39</sup>The designee from the State Treasurer's Office voted no on this recommendation.

***State agencies' timeliness in preparing and issuing requests for proposals for the delivery of health, education, and human services***

- Allow more flexibility in obtaining provider input when drafting specifications for procurements.
- Obtain copies of RFPs from other jurisdictions and create an agency reference library.
- Develop an internal tracking system that enables management to determine where delays are occurring.
- In appropriate cases, waive the requirement that RFPs be approved by a control agency.

***Timeliness of payments to contractors***

- Expand the requirement that contractors with large State contracts accept electronic payments to include all State contractors.
- Allow electronic invoicing.
- Allow providers to draw funds in advance of services rendered similar to federal payment models, which would eliminate cash-flow problems for small providers who otherwise require outside credit sources at additional cost.
- Meet with representatives from provider organizations to develop a standard invoice format.

***Standardization of contracting processes among and within State agencies***

- Streamline and standardize contracts and grant award agreements where possible.
- Standardize information requirements, such as budget categories, whenever possible.
- Propose legislation requiring agencies to develop standard forms and billing procedures by a certain date.
- Encourage State agencies to strive for uniformity in reporting formats.

***Other issues, including current State laws or regulations affecting the efficiency and cost of procuring health, education and social services.***

- Allow adequate time for providers to review contract documents before signing.
- Allow electronic signatures to bind the parties.
- Since the small procurement threshold has not been increased since 1996, recommend that the Board of Public Works review the current \$25,000 small procurement threshold and make appropriate recommendations to the General Assembly (as provided in §13-109 of the State Finance and Procurement Article of the Annotated Code).

- Since the Board of Public Works procurement delegation has not been raised since 1999, recommend that the Board of Public Works conduct an analysis of its current \$200,000 procurement delegation.<sup>40</sup>
- Increase and centralize training for State agencies.
- Establish disincentives regarding the filing and prosecution of protests concerning State procurements by providing that the State may recover the same types of costs as are available to a prospective bidder or offeror, a bidder, or an offeror under current law and regulations, when such a party files and prosecutes a protest in bad faith or without substantial justification.<sup>41</sup>

### ***Minority Business Enterprise***

- Identify ways to introduce appropriate flexibility in administering and reporting MBE subcontract payments.
- Offer workshops in MBE subcontract requirements targeted for human services providers.
- Provide additional training for procurement officers and contract administrators to fully understand the concept of good-faith efforts in MBE subcontracting.
- Periodically survey providers to pinpoint any unresolved MBE concerns.
- Conduct a series of MBE workshops for providers to enhance knowledge and skills in areas such as MBE forms, searches of MDOT database, quarterly reporting, and waivers.
- Generate MBE Frequently Asked Questions (FAQs) that providers can access on the Internet.
- Schedule regular meetings among GOMA and State agencies to maintain clarity and consistency regarding provider MBE requirements.
- Clarify and streamline current MBE forms and instructions to the greatest extent possible.
- Explore repeal of the statutory requirement that MBE prime contractors meet MBE subcontracting goals, especially in light of continuing developments in the State's MBE Program.

### ***Contract Monitoring***

- Explore ways to consolidate and condense recurring reports.
- Ensure that RFP documents clearly outline provider responsibilities and reporting requirements, as well as contract monitoring and payment expectations.
- Provide training and standards regarding the level of oversight and control that is reasonable in managing contract performance.
- Set a reasonable standard set for requiring audits.

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<sup>40</sup> COMAR 21.02.01.04; Designees from the State Treasurer's Office and the Office of Minority Affairs and an appointed member of the contract provider community voted "no" to the initial Task Force recommendation that the procurement delegation be raised to \$500,000.

<sup>41</sup> The designee from the State Treasurer's Office voted no on this recommendation.

## ***Human Services Procurement Committee***

Create a standing committee composed of:

- 1) State agencies procuring social services;
- 2) Department of Budget and Management;
- 3) Governor's Office of Minority Affairs;
- 4) Governor's Office of Community Initiatives;
- 5) Governor's Office for Children;
- 6) Board of Public Works; and
- 7) Provider organizations.

The Committee would: 1) ensure the recommendations of the Task Force are implemented; and 2) provide a forum for resolution of recurring issues. The committee would report annually on its progress to the General Assembly and Board of Public Works.

## ***Technology***

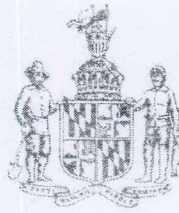
- Establish a phased-in requirement that agencies use *eMaryland Marketplace* to conduct competitive sealed proposals procurements.<sup>42</sup>
- Use the State's *eGovernment* contract to develop an Internet-based data warehouse (document vault) that would eliminate the need for providers to submit the same documents to multiple agencies.

## **CONCLUSION**

Using enhanced technology and incorporating sound business practices into the procurement process benefits not only recipients of social services, but also State procurement operations. If a significant portion of the Task Force recommendations are met, there will be substantial improvement to the way the State delivers services to its residents.

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<sup>42</sup> The designee of the Secretary of Budget and Management voted no on this recommendation.



THE MARYLAND GENERAL ASSEMBLY  
ANNAPOLIS, MARYLAND 21401

November 30, 2010

The Honorable Thomas V. Miller, Jr.  
President, Maryland Senate  
State House, H-107  
Annapolis, MD 21401-1991

The Honorable Michael E. Busch  
Speaker, Maryland House of Delegates  
State House, H-101  
Annapolis, MD 21401 -1991

**RE: Preliminary Report, Task Force to Study the Procurement of Health, Education, and Social Services by State Agencies**

Dear President Miller and Speaker Busch:

Chapter 439 of the Laws of 2008 established the Task Force to Study the Procurement of Health and Social Services by State Agencies. Chapter 683 of the Laws of 2010 extended the Task Force to June 30, 2012 and renamed it the Task Force to Study the Procurement of Health, Education, and Social Services by State Agencies. The Task Force is charged with:

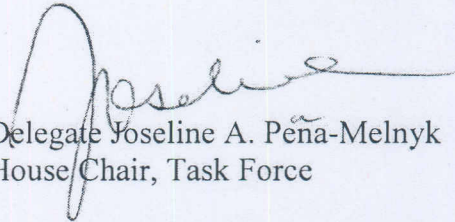
- evaluating and making recommendation regarding the methods used by State agencies to procure the delivery of health, education, and social services;
- examining and making recommendations regarding State agencies' timeliness in preparing and issuing requests for proposals for the delivery of health, education, and human services;
- examining and making recommendations regarding the timeliness of payments to contractors;
- examining and making recommendations regarding possible standardization of contracting processes among and within State agencies; and
- identifying and making recommendations regarding any other issues, including current State laws or regulations affecting the efficiency and cost of procuring health, education and social services.

The legislation includes requirements that the Task Force report its preliminary findings and recommendations to the Governor and the General Assembly on or before November 30, 2010 and its final finding and recommendations by November 30, 2011.

Despite the fact that the Task Force did not meet during 2010 due to the election year, the Task Force did follow through on its decision to send out a survey on State contract procurements and grant awards for health, social, and educational services. The survey was drafted by Henry Bogdan from the Maryland Association of Nonprofit Organizations with input from the Task Force members. The survey asks questions regarding procurements and grants for health, social, or educational services over \$25,000. The survey was sent to the State agencies and offices responsible for procurements and grants for health, social, or educational services. (Please see enclosed survey for details.) The Task Force will review the survey responses when it begins meeting in 2011 and the responses will help guide the Task Force as it concludes its examination and makes recommendations.

It should also be noted, that the Task Force is still not at full membership. Some appointments have not been made and some appointees are no longer employed according to the mandates of the legislation creating the Task Force. (Please see enclosed list of members and vacancies.) We will be working with our staff, the Governor's Office of Appointments, the Office of the President of the Senate, and the Office of the Speaker of the House to complete the appointments.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Joseline', with a long, sweeping horizontal line extending to the right.

Delegate Joseline A. Peña-Melnyk  
House Chair, Task Force

cc. Task Force Members  
Ms. Vicki Gruber  
Ms. Kristen Jones  
Mr. John Favazza

# SURVEY RESULTS

With the assistance of Maryland Nonprofits, the Task Force developed a survey of State agencies to assess the current volume of procurements and grants and the average length of time spent to process contract and grant awards.<sup>1</sup>

## PROCUREMENT CONTRACTS

- 1) What portion of your agency's total contract procurements have been to deliver health, social or educational services? (by number and approximate dollar volume)

	<b>FY 2009</b>	<b>FY 2010</b>
DHR	135 contracts; \$375,143,000	278 contracts; \$414,190,248
MSDE	109 contracts; \$15,905,877	103 contracts; \$20,531,063
DJS	45 contracts; \$111,345,134	30 contracts; \$74,230,000
DHMH	160 contracts; \$1,333,068 (avg. value)	142 contracts; \$1,042,281 (avg. value)

- 2) What is the approximate number of individual contract procurements now in place by your agency for health, social or educational services?

DHR	292
MSDE	36
DJS	76
DHMH	261

- 3) What is the average length of service delivery periods under current contract procurements for delivery of health, social or educational?

DHR	2 years
MSDE	1 year
DJS	18 mos. for social or education "per diem" contracts; one day or longer for healthcare contracts
DHMH	1 to 5 years with avg. of 3 years

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<sup>1</sup> The Department of Human Resources has a decentralized procurement operation with procurement authority given to each of the local departments of social services.

- 4) In contract procurements for continuation of an existing health, social or educational service or program, what has been the average amount of time prior to the beginning of the new service period that contracts or awards are actually executed or finalized?

DHR	2 days to 2 weeks
MSDE	5 to 6 months
DJS	2 to 4 weeks
DHMH	2 to 4 months

- 5) How many contract procurements for continuation of existing health, social or educational services or programs were not finalized (BPW approval if required), by the beginning of the new service period with no break in contract funding authorization? Please describe the provisions made to assure continuity of service in such cases.

**DHR**

*There is no way to obtain the requested information by numbers; however, if it is known that a procurement is ending and approval has not been provided to continue services, several things have happened:*

- *Sole source procurement with the current vendor to provide mandated services*
- *Mandated services continued and a retroactive contract submitted to the BPW for approval*
- *small contract put in place to continue mandated services until the larger agreement has been procured;*
- *extension of the current agreement is completed (bridge contract) which is viewed unfavorably;*
- *in some instances there has been a lapse in service if the services are not mandated by law;*

**DJS**

*61 per diem contracts were retroactively approved by the BPW on November 17, 2010, and 6 per diem contracts were retroactively approved by the BPW on May 18, 2011 (FY 2011).*

**DHMH**

*In FY11, there were 4 contracts, and current contracts were extended to until the new contracts were finalized.*

**MSDE**

*None*

6) Regarding delivery of health, social or educational services, does your agency accept electronic submission (and in what forms) of:

- Invoices or requests for payments?

**DHR** - *Responses varied from “only under exceptional circumstances such as a lost original, invoice coming in close to closing, etc.” to “under no circumstances are invoices accepted electronically”.*

**DJS** - *No*

**DHMH** - *No*

**MSDE** - *Yes*

- other contract performance related documents?

**DHR**- *Deliverables such as hours, attendance count or number of customers served by the contract; reports or annual audits and supplementary information*

**DJS** - *Monthly reports*

**DHMH** - *No*

**MSDE** - *Yes*

In what if any contract procurement related cases does your agency require submission of:

- original (vs. reproduced or copied) documents?

**DHR** - *All documents that must be signed require original signatures. However, allowance has been given to provide an electronic version in some instances where documents are required immediately, but those documents must be followed up by a hard copy originals in the mail.*

**DJS** - *One original is required*

**DHMH** - *Original signatures are required*

**MSDE** - *Original signatures on contracts and bid/proposal affidavits*

- original signatures in specific colors?

DHR	none
MSDE	none
DJS	none
DHMH	Yes, in blue ink

7) In your agency's contract procurements for delivery of health, social or educational services to occur during FY 2008 or later, what has been the average time allowed:

- Between issuance of an RFP or other solicitation and a pre-bid/proposal conference? In how many cases has this time been less than 10 days?

DHR	10 days minimum
MSDE	12 days
DJS	12 to 20 days minimum
DHMH	7 days after release of RFP

- Between pre-bid/proposal conferences and the deadline for final submissions?

DHR	At least 20 days
MSDE	30 days
DJS	At least 20 days
DHMH	at least two weeks after the pre-bid or pre-proposal meeting until the due date.

- In how many cases was this less than 14 days?

DHR	none
MSDE	none
DJS	none
DHMH	none

- Between the time that all substantive\* questions raised at pre-bid/proposal conferences are answered and the deadline for final submissions?

DHR	At least 14 days
MSDE	20 days
DJS	At least 14 days
DHMH	Unless there was a reason to extend the solicitation time period, all solicitations are scheduled to become due within 21-28 days after posting on eMarylandMarketplace.

- In how many cases was this less than 14 days? (“substantive”) meaning that the question may reasonably have direct impact on an important aspect of vendors’ responses)

DHR	none
MSDE	none
DJS	none
DHMH	

- overall, between issuance of an RFP or solicitation and the deadline for final submissions?

DHR	At least 30 days
MSDE	44 days
DJS	At least 40 days
DHMH	We extend the minimum 21 day solicitation time in about half of our bids/proposals.

- In how many cases has this time been less than 4 weeks?

DHR	none
MSDE	none
DJS	none
DHMH	Est. half of total

- 8) In how many cases for delivery of health, social or educational services during FY 2008 or later have RFP’s been withdrawn and re-issued?

DHR	4
MSDE	1 due to budget
DJS	2
DHMH	fewer than 5

- 9) In how many cases has your agency solicited or invited comments from the community of possible service providers regarding the preparation of an RFP for health, social or educational services (to be provided during FY 2008 or later)?

DHR	none
MSDE	none
DJS	none
DHMH	none

In what proportion of contract procurements involving new programs, or major changes to prior contract provisions, was this done?

DHR	NA
MSDE	NA
DJS	NA
DHMH	NA

What in your view are the most time-consuming factors/stages in the process for contract procurements? What if any changes would you recommend?

#### **DHR**

*The most time consuming factors/stages are with writing the specifications and that is due to scheduling conflicts with the staff that need to be at the table and staff resources.*

#### **DJS**

*The longest portion of the procurement process is getting the solicitation document approved within DJS and by our approving agency DBM. The Assistant Attorney General's Office also has specific preferences for contract format and specific language such as in our indemnification and insurance sections of the contract. There seems to be a lack of coordination between the AAG offices regarding what is acceptable in contracts, affidavits and solicitation documents. Standardization should be used as much as possible to shorten review and approvals by State personnel involved in reviewing procurement solicitation documents and contracts. Task Order RFPs issued by the parent agencies for Human Services would eliminate the number of different RFPs to be reviewed and approved.*

*It may also be a good idea to centralize procurement similar to the Attorney General's Office. Staff could be assigned to work in specific agencies but they would all report to one Central Headquarters. All solicitation documents and contracts would be written in the same format with specific added clauses for specific agency regulations or procedures.*

#### **DHMH**

*We find that drafting of the bid/proposal specifications and other required portions of the solicitation takes the longest time due to staff commitments. Also, evaluation of proposals can take extended time due to the need to have all evaluators together. This could change if we better utilized technology (webinars, video conferences, etc).*

**MSDE**

*Review of documents before solicitation publication, and standardization of RFP documents for Statewide use.*

## GRANTS

*\*DHR, DHMH, and MSDE*

- 1) What portion of your agency's total grant awards have been for the provision of health, social or educational services? (by number and dollar volume)

	<b>FY 2009</b>	<b>FY 2010</b>
DHR	243 grants; \$300,001,300	223 grants; \$291,810,683
MSDE	3099 grants; \$6,033,303,611	3056 grants; \$6,512,764,104
DHMH	<i>Incl. in FY 2010 total</i>	Since 2008, 485 grants; \$333,224,487

- 2) What is the approximate number of individual grant awards now in place by your agency for provision of health, social or educational services?

DHR	325
MSDE	9
DHMH	154

- 3) What is the average length of service delivery periods under current grants awards for delivery of health, social or educational?

DHR	2 to 3 years
MSDE	12 months
DHMH	12-24 months

- 4) In grant awards for continuation of an existing health, social or educational service or program, what has been the average amount of time prior to the beginning of the service period that awards are actually executed or finalized?

DHR	2 weeks
MSDE	3 months
DHMH	1 to 2 months

- 5) How many grant awards for continuation of existing health, social or educational services or programs were not approved by the beginning of the new service period? Please describe the provisions made to assure continuity of service in such cases.

DHR	None
MSDE	None
DHMH	None

- 6) Regarding grant awards for delivery of health, social or educational services, does your agency accept electronic submission (and in what forms) of:

- invoices or requests for payments?

DHR	No
MSDE	Yes
DHMH	Varies among offices

other grant performance related documents?

**DHR** - *Monthly statistical and trimester-based narrative performance reports by e-mail. Accepts deliverables such as charts and graphs that do not require original signatures.*

**MSDE** - *Yes, requests for grant proposals*

**DHMH** - *Not all offices accept electronic submission of other documents.*

- 7) In what if any grant award or performance related cases does your agency require submission of:

- original (vs. reproduced or copied) documents?

DHR	All documents that require signature
MSDE	Invoices
DHMH	Most

- original signatures in specific colors?

DHR	None
MSDE	None
DHMH	Yes, at some offices

- 8) In your agency's grant awards for delivery of health, social or educational services, what has been the average time frame allowed:

- between issuance of an announcement of funding availability and a pre-award conference? In how many cases has this time been less than 10 days?

DHR	None
MSDE	14 days; None
DHMH	NA

- between pre-award conferences and the deadline for final submissions? In how many cases has this time been less than 14 days?

DHR	None
MSDE	20 days; None
DHMH	NA

- between the time that all substantive\* questions raised at pre-award conferences are answered and the deadline for final submissions?

DHR	14 days
MSDE	14 days
DHMH	NA

- In how many cases has this time been less than 14 days? ("substantive" meaning that the question may reasonably have direct impact on an important aspect of vendor's responses)

DHR	None
MSDE	None
DHMH	NA

- overall, between issuance of a notice of funding availability and the deadline for final submissions?

DHR	30 days
MSDE	44 days
DHMH	NA

- In how many cases has this time been less than 4 weeks?

DHR	None
MSDE	None
DHMH	NA

- 9) In how many cases for delivery of health, social or education services during FY 2008 or later have announcements of funding availability been withdrawn and re-issued?

DHR	None
MSDE	None
DHMH	None

- 10) In how many cases has your agency solicited or invited comments from the community of possible providers regarding the preparation of a notice of funding availability for health, social or educational services (to be provided during FY 2008 or later)?

DHR	None
MSDE	None
DHMH	Only at Community Health Resources Commission

- 11) In what proportion of cases involving new programs, or major changes to provisions of prior grant awards, was this done?

DHR	NA
MSDE	NA
DHMH	NA

- 12) What in your view are the most time-consuming factors/stages in the process for grant announcements or awards? what if any changes would you recommend?

**DHR** - *Again, it's writing the scope of work and getting members together to review the proposals.*

**MSDE** - *The grants program works well at MSDE. No changes recommended.*

**DHMH** - *1) Reviewing applications; 2) Getting signed approval from grantees; and 3) Grant monitoring*

\*The Department of Juvenile Services does not have a formal grant making program with the exception of the Juvenile Services Facilities Capital Grant and Loan Program which is not applicable to this survey.